

MESA PETROLEUM CO.

IBLA 80-278

Decided April 18, 1980

Appeal from a decision of the Commissioner, Bureau of Indian Affairs, disapproving negotiated leases for oil and gas.

Affirmed.

1. Indian Lands: Allotments: Generally -- Indian Lands: Leases and Permits: Oil and Gas -- Indian Lands: Oil and Gas Leasing: Allotted Lands

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

APPEARANCES: Paul R. Kiser, Esq., Denver, Colorado, for appellant; David E. Jones, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Commissioner, Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mesa Petroleum Co. appeals from a decision by the Commissioner, Bureau of Indian Affairs (BIA), dated December 13, 1979, disapproving leases negotiated by appellant for oil and gas exploration on certain Navajo allotment lands in New Mexico. 1/ This appeal is before this Board by order of the Director, Office of Hearings and Appeals.

1/ The lands which appellant sought to lease as set forth in the negotiated leases at issue are the following:

T. 24 N., R. 7 W., New Mexico principal meridian.
Sec. 31: Lots 1 and 2, E 1/2 NW 1/4
Rio Arriba County, New Mexico

The file reveals that Mesa's efforts to explore the subject lands for oil and gas began in December 1976 with a request to BIA to advertise for sale oil and gas leases for such lands. Subsequent requests in July 1977, February 1978, January 1979, and March 1979 failed to bring about the intended advertising for oil and gas leases. Failing in its efforts to cause BIA to advertise, appellant negotiated three leases with heirs of the allottees of the subject lands. The lands at issue are "individually owned lands" and subject to leasing for mining purposes. 25 CFR 131.1(b).

On December 4, 1979, Mesa submitted to the Commissioner, BIA, for his approval the three aforementioned leases pursuant to 25 CFR 131.5. Shortly thereafter on December 13, 1979, the Commissioner disapproved the three proffered leases, because "the negotiated offer falls far short of the minimum acceptable bid recommended by the U.S. Geological survey." The Commissioner did, however, direct the Navajo Area Office to advertise the tracts long sought by Mesa.

Mesa's appeal of the Commissioner's action is directed to the Commissioner's decision to call for advertising of the subject parcels. In considerable detail, counsel for Mesa discusses the various statutes authorizing the leasing of Indian allotment lands. The gist of counsel's argument is that the regulation authorizing the advertisement of offers for oil and gas leases, 25 CFR 172.4, is inapplicable where an allottee (or his heirs) has granted a lease pursuant to the Act of March 3, 1909, 25 U.S.C. § 396 (1976), and the applicable regulation, 25 CFR 131.6.

The right of a Navajo allottee to grant a lease is clearly set forth at 25 U.S.C. § 396 (1976):

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this section into full force and effect *

A subsequent statute, the Act of May 11, 1938, 25 U.S.C. § 396a-f (1976), authorized the leasing of unallotted lands for

fn. 1 (continued)

T. 24 N., R. 8 W., New Mexico principal meridian.
 Sec. 25: SE 1/4
 Sec. 27: NE 1/4
 San Juan County, New Mexico

mining purposes with the approval of the Secretary of the Interior. 2/ This statute specifically provided, contra the Act of March 3, 1909, that such oil and gas leases shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Language from 25 U.S.C. § 396b (1976) has been incorporated in part in 25 CFR 172.4, the regulation whose application appellant objects to in the instant appeal.

A third statute, the Act of August 9, 1955, 25 U.S.C. § 396 (1976), authorized the Secretary to offer for sale leases for mining purposes on lands of a deceased allottee where the heirs or devisees have not been determined or cannot be located. Such sales are subject to notice and advertisement requirements similar to those at issue here.

Appellant's discussion of the various statutes reveals that there exists no statutory requirement for notice and advertising of oil and gas lease sales on allotted lands where, as here, the heirs of an allottee have been determined and their whereabouts are known. Regulations found in 25 CFR Part 131 require notice and advertising where the Secretary grants a lease on behalf of persons who may be non

2/ This statute provides in relevant part:

"§ 396a. Leases of unallotted lands for mining purposes; duration of leases

"On and after May 11, 1938, unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of sections 396a to 396g of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities."

"§ 396b. Public auction of oil and gas leases; requirements

"Leases for oil- and/or gas-mining purposes covering such unallotted lands shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Such advertisement shall reserve to the Secretary of the Interior the right to reject all bids whenever in his judgment the interest of the Indians will be served by so doing, and if no satisfactory bid is received, or the accepted bidder fails to compete the lease, or the Secretary of the Interior shall determine that it is unwise in the interest of the Indians to accept the highest bid, said Secretary may readvertise such lease for sale, or with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations * * *."

compos mentis, orphaned minors, or in other ways in need of Secretarial assistance. 25 CFR 131.2, 25 CFR 131.7. These regulations, 25 CFR 131.2 and 25 CFR 131.7, are not applicable to the present facts. See also 25 CFR 172.6 regarding leases for other than oil and gas.

The fact that a statute does not compel the Commissioner to give notice and to advertise an offer to lease allotment lands does not make improper the Commissioner's action in this case. The regulation at issue here, 25 CFR 172.4, clearly authorizes the publication of a notice to offer allotment lands for oil and gas leasing. Such regulation is entirely consistent with the Act of March 3, 1909.

It is the policy of the Bureau of Indian Affairs that in order to lease Indian allotment lands for oil and gas development a competitive sale of that lease must first be held. This policy, we find, is entirely consonant with 25 CFR 172.4.

We note that 25 CFR 172.4(b) acknowledges the possibility of private negotiations for oil and gas rights only after a public sale has been offered and no satisfactory bid has been received, the accepted bidder fails to complete the lease, or the Secretary has determined that it is unwise in the interests of the Indians to accept the highest bid.

The syllabus of United States v. Morehead, 243 U.S. 607 (1916), a case decided by Justice Brandeis, accurately sets forth the applicable law: "The Land Department being expressly charged with the duty of enforcing the public land laws by appropriate regulations, its regulations in that regard, when duly promulgated, must be deemed valid if they are not unreasonable, inappropriate, or inconsistent with the acts of Congress."

In Forbes v. United States, 125 F.2d 404 (1942), the Court of Appeals for the Ninth Circuit held:

And it is a recognized principle of long standing that a "regulation by a department of government, addressed to and reasonably adapted to the enforcement of an act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with express statutory provision." (Citations omitted.)

See also Continental Oil Co., 70 I.D. 473 (1963).

We find that the regulation at issue here, 25 CFR 172.4, is entirely reasonable, appropriate, and consistent with the Act of March 3, 1909. This fact is best understood upon considering this Department's longstanding policy of protection of the interests of Native Americans. Cramer v. United States, 261 U.S. 219 (1922).

Under date of March 7, 1980, the Area Director, Navajo Area, caused to be published Advertisement No. 112, stating that sealed bids would be received until 2 p.m. on April 23, 1980, at the Navajo Area Office for the leasing of the lands at issue. No reason appears in the record to change this plan of events.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

